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September 23, 2005

Ms. Diane L. Hardt  
Administrator  
Wisconsin Department of Revenue  
2135 Rimrock Road, 6-40  
P.O. Box 8933  
Madison, WI 53708-8933

Mr. Scott C. Peterson  
South Dakota Department of Revenue and Regulation  
445 E. Capitol Ave.  
Pierre, SD 57501

**Re: Interpretation of “Provided by the Seller” from the SSTP “Prepared Food” Definition**

Dear Ms. Hardt and Mr. Peterson:

In July 2004, The Food Marketing Institute<sup>1</sup> (FMI) submitted comments to the SSTP (please see attachment) asking for an amendment to the “Prepared Food” definition. FMI requested a “bright line” interpretation of number three of the definition, stating that the mere presence of plates, knives, forks, spoons, glasses, cups, napkins, or straws in a store does not constitute a “Prepared Food.” In other words, food items are not “sold with eating utensils” when the seller has merely placed a napkin dispenser on the counter or has set up a utensil island for customers in their store.

As you may know, a proposal is before the steering committee of the SSTP that contains such a clarification. FMI supports the notion of clarification by percentage of sales. In a

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<sup>1</sup> FMI conducts programs in research, education, industry relations and public affairs on behalf of its 2,300 member companies — food retailers and wholesalers — in the United States and around the world. FMI’s U.S. members operate approximately 26,000 retail food stores with a combined annual sales volume of \$340 billion — three-quarters of all food retail store sales in the United States. FMI’s retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from 60 countries.

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December 20, 2004 memo sent to SSTP members, a proposed 75% of the seller's total sales at an establishment are used to determine the definition of "provided by the seller" with respect to utensils.

This is a straightforward way of determining whether or not a product is considered a "Prepared Food." The idea of determining if a food product is a "Prepared Food" because a customer happens to pick up a utensil or a straw that is available on a counter is confusing to customers and it is confusing to retailers.

FMI appreciates the opportunity to comment on this issue. Please do not hesitate to contact me at 301.591.4403 or [etansing@fmi.org](mailto:etansing@fmi.org) if I can provide further information.

Sincerely,

Elizabeth K. Tansing  
Director, State Government Relations

Attachment

<http://www.fmi.org/newsletters/uploads/CommentsFiled/ACF5628.pdf>